

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 7 Case
)	Number <u>96-11053</u>
DONALD C. NEWMAN)	
M. DIANE NEWMAN)	
)	
Debtors)	
_____)	
MASTERGUARD)	FILED
)	at 8 O'clock & 45 min. P.M.
Movant)	Date: 1-30-97
)	
vs.)	
)	
DONALD C. NEWMAN)	
M. DIANE NEWMAN)	
)	
Respondents)	

ORDER

By motion, Masterguard a party in interest in this Chapter 7 case seeks to reopen the case pursuant to 11 U.S.C. §350(b) contending that it failed to receive notice of hearing on the debtor's motion to redeem brought pursuant to 11 U.S.C. §722.

The debtors filed a motion to redeem property securing a debt owed Nationwide Acceptance Corporation consisting of heat detector and smoke alarm for a fair market value of \$100.00 on July

10, 1996 and certificate of service indicates service on July 9 upon the creditor Nationwide Acceptance Corporation, P. O. Box 650491, Dallas, Texas 75265-0491. On July 12, 1996 the clerk served an order and notice of discharge hearing for September 5, 1996 which notice provided "applications for reaffirmation or redemption having been filed by the debtor(s) in the captioned case, IT IS HEREBY ORDERED that a discharge hearing shall be held on: September 5, 1996 at 9:00 a.m., U.S. Bankruptcy Court, Suite 150, 827 Telfair Street, Augusta, Georgia 30901." In addition to the notice of hearing the clerk again served a copy of the motion to redeem upon Nationwide Acceptance Corporation at the address indicated on the mailing matrix and certificate of service filed by the debtors. On July 23, 1996 Masterguard filed a response objecting to the motion to redeem which response provided:

. . . Masterguard . . . would object to the debtors motion to reclaim property and to have its value placed at \$100.00 and would show as reasons therefor as follows:

1. The Creditor Masterguard sold the items in question to the Debtors and financing was provided through Nationwide Acceptance.
2. When the Debtors defaulted on payment the Creditor Masterguard was required to repay Nationwide Acceptance the amount of \$1,357.00 and have not been able to reclaim their property.
3. The property that the Debtors have in their possession consists of 2 heat detectors, 4 smoke detectors and 2 fire extinguishers for a

total retail price of \$1,450.08.

4. That the items were secured by the proper documents as admitted by the Debtors.

Wherefore these premises considered the Creditor Masterguard requests that the items be returned to them or that the secured debt be paid in full.

The response to the motion to redeem was filed by Ben C. Hand as attorney for Masterguard. As Mr. Hand is not a member of the Bar of the Southern District of Georgia by correspondence dated July 29, 1996 the clerk advised him of the pro hac vice admission requirements for practice in the United States District Court for the Southern District of Georgia, including the Bankruptcy Court. To this date Mr. Hand has not complied with that requirement.

Pursuant to the notice discharge hearing was held on September 5, 1996, neither Masterguard nor Nationwide Acceptance appeared and by order filed September 12, 1996 I approved the debtors' motion to redeem for the value set forth in the motion. The motion and notice of hearing were served upon Nationwide Acceptance Corporation and from the response filed July 23, 1996 Masterguard obviously received a copy.

The current motions, to reopen this case and for relief from the order approving the debtors' motion to redeem alleges a lack of notice of hearing on the motion to redeem and mistake and inadvertent failure of the court to provide notice of the hearing to

movant, Masterguard. The motions are defective and denied on the following grounds:

1. The motion are signed "T. Baron Gibson, II by WKM." United States District Court for the Southern District of Georgia Local Rule LR 11 modified and made applicable to bankruptcy practice pursuant to Bankruptcy Local Rules provides:

LR 11. Signing of Pleadings
LR 11.1 Counsel Identification.
Every pleading, motion, or other paper presented for filing shall, pursuant to Federal Rule of [Bankruptcy Procedure 9011], be signed by at least one attorney of record in the attorney's individual name, and shall contain counsel's name, complete address (including post office box or drawer number and street address), telephone number, and State Bar Number. Each attorney and pro se litigant has a continuing obligation to apprise the Court of any address change. Lead counsel shall be identified on the complaint and the responsive pleadings of each party, and the Clerk shall be advised of any change in lead counsel.

As Mr. Gibson did not sign the current motions, the "signature" does not comply with this rule.

2. The motions fail to allege that Masterguard was a creditor of the debtors at the time of the bankruptcy filing or that the debtors received any notice from any party that the interest of Nationwide Acceptance Corporation was transferred to Masterguard.

3. The response filed by Masterguard establishes that it received the motion to redeem and the current motions fail to explain how Masterguard knew of the motion to redeem and not the hearing, as

both were served by the clerk upon Nationwide Acceptance.

In addition to the technical failures of counsel to comply, first with the pro hac admission requirements served upon Masterguard's initial counsel and now current counsel's failure to sign the pleadings filed in this matter, the motions fail to establish a basis for reopening the case to administer an asset to accord relief to the debtor or for other cause and fail to allege sufficient basis for relief from the order of this court pursuant to Federal Rule of Bankruptcy Procedure 9024. No mistake or inadvertence by this court or the debtors is shown. Instead, Masterguard attempts to reopen the case to relitigate settled issues decided adversely to Masterguard as a result of its own actions or omissions, an inadequate reason to reopen a closed case. Nissan Motor Acceptance Corp. v. Daniels (In re Daniels), 163, B.R. 893 (Bankr. S.D. Ga. 1994). Closing a bankruptcy case provides finality for both creditors and debtors, which finality courts are reluctant to disturb. See e.g., In re Hobbs, 141 B.R. 466 (Bankr. N.D. Ga. 1992); In re Atkinson, 62 B.R. 678 (Bankr. D. Nev. 1986); McQueary v. Cary (In re: McQueary), 43 B.R. 948 (Bankr. W.D. Ky. 1984). It is therefore ORDERED that the motion to reopen this case and for relief from the order of this court is denied.

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 29th day of January, 1997.